

Memorandum

To : File No. T-88-472

Date : October 2, 1989

From : FAIR POLITICAL PRACTICES COMMISSION
Kathryn E. Donovan

Subject : Telephone Advice to Richard Piedmonte, California Judges
Association

On January 20, 1989, I provided the following advice to Richard Piedmonte in response to his letter requesting our review of a memorandum he had written:

1. On the first page of his memorandum, where it states that January 1, 1989 is the "effective date of Section 85306," I advised Mr. Piedmonte that Section 85306 became "effective" on June 8, 1988, but did not operate as law until January 1, 1989.

2. On page three, the third paragraph, the memorandum states that the portion of an old contribution which is in excess of the contribution limits should be "returned or donated elsewhere." I advised Mr. Piedmonte that those funds should instead be deposited in the candidate's "restricted account," and not used to support or oppose any candidacy.

DEC 19 8 25 AM '88
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December 14, 1988

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Constance E. Dove
Executive Director

Kathy Donovan
Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

Dear Ms. Donovan:

Enclosed please find a copy of a memorandum recently mailed to all CJA members, describing the impact we believe Proposition 73 has on them. This memorandum was produced, as indicated in its body, after telephone consultation with your office, with that of the Attorney General, and after consulting published regulations and our attorneys.

That said, there may be things in it that are incorrect, or not as correct as they could be, and we would appreciate your pointing out any such mistakes to us. Judge Sherman W. Smith, Jr., of Los Angeles said that you would appreciate the opportunity to do this. This will allow us to notify CJA members of any needed corrections promptly. Thank you for your organization's help now and throughout this process.

Sincerely,



Richard S. Piedmonte
Legislative Coordinator



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Constance E. Dove
Executive Director

MEMORANDUM

TO: California Judges Association Members

FROM: Candace D. Cooper, President

DATE: December 6, 1988

RE: Proposition 73/Campaign Contribution Limits Amendments of 1988

Judges with unexpended campaign funds on hand should be aware that a crucial deadline regarding Proposition 73, approved by voters last June, is **January 1, 1989**. Implementing Prop. 73 is mainly the responsibility of the Fair Political Practices Commission (FPPC). The Attorney General's office (A-G) also has some responsibility for implementing Prop. 73. At present, some portions of Prop. 73 are already in actual effect; the most important have to do with contributions received between June 9, 1988, and January 1, 1989. The FPPC promulgated regulations on November 9th at Cal. Code of Regulations Title 2, Secs. 18536, and will meet to approve final versions of sections 18536.1, and 18536.2 on December 6th. The A-G is responding to written and phone inquiries about 73 on a case-by-case basis.

Please keep in mind that portions of this memorandum are based on oral representations and emergency regulations which are subject to change—though little change is anticipated. Judges should consult with their personal advisor in these matters and/or their campaign treasurer. Any questions not answered at that point should be asked of the FPPC technical division at (916)322-5901.

Unexpended campaign funds under Proposition 73

Sec. 85306 of the Contribution Limits Amendments states that "Any person who possesses campaign funds on the effective date of this chapter may expend those funds for any lawful purpose other than to support or oppose a candidate for elective office." In this instance, January 1, 1989, is the "effective date."

"Campaign funds" are defined in the FPPC's Sec. 18536 as (1) all cash and cash equivalents possessed on June 8, 1988, and any other assets purchased thereafter with that cash or cash equivalents, and (2) any contributions, cash, cash equivalents, or

(Under Proposition 73, there is no limit to the number of committees to which a person may belong, and a committee need have only two people in it.)

—Second, a separate bank account must be established for these funds.

—Third, into that same account may also go any contributions on hand that, after a review, are found to have been under the new ceilings. The review should begin with the most recent contribution and move back through time. If an 'old' contribution was over the new ceilings, that **portion** of it which was over the limit should be returned or donated elsewhere. The remainder **may** be retained for campaign purposes.

—Fourth, a declaration of intent to be a candidate must be filed in accordance with Government Code Secs. 85200 and 85201 before any of this money is expended for campaign purposes.

On the surface, this exception is quite surprising. But according to its explanation in the Regulatory Notice Register, the FPPC took note of the fact that in the Buckley v. Valejo decision, 424 U.S. 1, the U.S. Supreme Court approved only those restrictions on fundraising and expenditures which are oriented toward preventing corruption by restricting large contributions. The FPPC feared that any impediment to fundraising in contribution increments not violative of the new, Prop. 73 ceilings would be an unconstitutional restraint of candidates' First Amendment rights.

Probable end to 'solidarity funds'

Committees which are "controlled" by one or more candidates for the purpose of contributing to the campaigns of a 'pool' of candidates as the need arises will probably become a thing of the past, since no controlled committee will be allowed to transfer funds to any other candidate. This basically wipes out any "judges' defense" or "judges' solidarity" committees as campaign fundraising devices. However, as noted above, any two people may form a committee and make contributions to multiple candidates.

Possible destinations for unexpended funds

One possible "lawful purpose" for unexpended campaign funds which you do not carry over is their donation to a charitable or

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other assets received or purchased from June 8, 1988, through December 31, 1988, the proceeds thereof, and the rents issues and profits thereon. Loans receivable are campaign funds; uncollected pledges are not.

Sec. 85304 of Prop. 73 states that "No candidate for elective office or committee controlled by that candidate or candidates for elective office shall transfer any contribution to any other candidate for elective office. Transfers of funds between candidates or their controlled committees are prohibited."

Taken together, these sections seem to indicate that while any money a judge might have in his or her campaign fund on January 1, 1989 could be used legally under Prop. 73 in ballot measure activities or for officeholder expenses, it is forever useless for candidate campaigning purposes. The implication is that this money can only be expended for some other, "lawful," purpose. (The FPPC has stated that "lawful purpose" should be defined by cross-reference to the definition of "personal use" found at Elections Code Secs. 12400 through 12407. The A-G has stated that it will render opinions on special situations when asked.)

Judges also face the restrictions of Canon 7A of the Code of Judicial Conduct, limiting to \$1,000 all contributions to political candidates, committees, or causes in any one year.

Carryover of funds still possible

However, the FPPC has created a major exception to Sec. 85306. In its regulations, the FPPC allows the carryover of funds between this year and next if certain steps are taken.

—The first step is that any new contributions a judge's committee solicits should, of course, be in compliance with the new contribution ceilings mandated by Prop. 73. Those ceilings are \$1000 per person per year; \$2500 per political committee; and \$5000 per broad based committee.

A "person" for this purpose is defined as an individual, proprietorship, firm, partnership, company, corporation, or committee. A "political committee" is a committee of persons who receive contributions from two or more persons and acting in concert makes contributions to candidates. A "broad based political committee" is a committee which has been in existence for more than six months, receives contributions from one hundred or more persons, and makes contributions to five or more candidates.

(Under Proposition 73, there is no limit to the number of committees to which a person may belong, and a committee need have only two people in it.)

—Second, a separate bank account must be established for these funds.

—Third, into that same account may also go any contributions on hand that, after a review, are found to have been under the new ceilings. The review should begin with the most recent contribution and move back through time. If an 'old' contribution was over the new ceilings, that **portion** of it which was over the limit should be returned or donated elsewhere. The remainder **may** be retained for campaign purposes.

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Possible destinations for unexpended funds

One possible "lawful purpose" for unexpended campaign funds which you do not carry over is their donation to a charitable or

educational organization. (See the Elections Code sections cited above for other guidance on this point.) If this is your decision, please consider the California Judges Foundation, your own non-profit, tax-exempt corporation devoted to judicial education and the education of the public about our judicial system. The Foundation's address and phone are the same as CJA's.

Questions?

Although special situations should be submitted to the FPPC or the A-G's office, clarification of this memorandum is available from Richard Piedmonte of CJA's staff.



California Fair Political Practices Commission

December 21, 1988

Richard S. Piedmonte
Legislative Coordinator
California Judges Association
Fox Plaza, Suite 208
1390 Market Street
San Francisco, CA 94102

Re: 88-472

Dear Mr. Piedmonte:

Your letter requesting advice under the Political Reform Act was received on December 19, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel (C)

DMG:plh